

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PHILLIP M. VELAZQUEZ,
Institutional ID No. 175528

Plaintiff,

v.

No. 5:20-CV-00078-H

CODY BAKER, *et al.*,

Defendants.

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation that the Court should dismiss with prejudice all of Plaintiff's claims except his excessive-use-of-force claim against Defendant Hannah Durham. As to the remaining claim, the Magistrate Judge recommended that the Court enter a scheduling order. No objections were filed.¹ The District Court independently examined the record and reviewed the findings, conclusions, and recommendation for plain error. Finding none, the Court accepts and adopts the findings, conclusions, and recommendation of the United States Magistrate Judge.

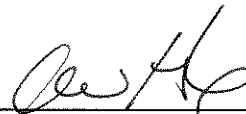
¹ The Court notes that Plaintiff filed a "Motion to Prevail on Claims for Malicious Prosecution," (Dkt. No. 24), after the Magistrate Judge entered his findings, conclusions, and recommendation. In his motion, Plaintiff "presents his argument and objections," to "move the court towards the facts and true findings of this civil suit." (*Id.*) However, in substance, Plaintiff's motion agrees with the findings, conclusion, and recommendation of the Magistrate Judge. Despite the title given to the motion, Plaintiff restates his claim for excessive use of force against Defendant Hannah Durham and asks the Court to advance this claim to the next stage. Plaintiff's motion does not raise any objection to the Magistrate Judge's report.

As a result, the Court finds:

1. Plaintiff's claims against LCDC, Corporal Baker, and the Doe Defendants should be dismissed with prejudice under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).
2. Plaintiff's claims against Hannah Durham for unconstitutional conditions of confinement and retaliation should be dismissed with prejudice under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).
3. There is no just reason for delay in entering a final judgment and final judgment should be entered as to the above-named Defendants and claims under Federal Rule of Civil Procedure 54(b). The Court will enter judgment accordingly.
4. Defendant Durham's motion to dismiss (Dkt. No. 17) is denied. The Court will enter a separate scheduling order, setting forth dates for pretrial deadlines and filing dispositive motions as to Plaintiff's remaining excessive use-of-force claims against Defendant Durham.
5. Plaintiff's motion to prevail on claims for malicious prosecution (Dkt. No. 24), is denied as moot.
6. The caption of this case should be changed to reflect that Hannah Durham is the only remaining defendant.

So ordered.

Dated March 3, 2021.



JAMES WESLEY HENDRIX
United States District Judge